

REMARKS

By the present amendment, Applicant has amended Claims 17, 24-28 and 36, canceled Claims 22, 23, and 29-35, and added Claims 37-39. Claims 1-16 have been cancelled by a previous amendment. Claims 17-21, 24-28, and 36-39 remain pending in the present application. Claims 17, 26 and 36 are independent claims.

In the recent Office Action dated September 7, 2005 the Examiner rejected Claims 17-36 under 35 U.S.C. § 103(a) as being unpatentable over Tamasaki (Japan 10-215759) in view of Mederer (EP 349,841), and Neuhauser (FR 2,744,593), or in the alternative of Mederer and Neuhauser in view of Tamasaki, both further in view of a myriad of alleged combinations Manoski (6,159,511), Heppe (873,369), Mueller (1,494,861), Renner (2,924,529), Eales (5,066,502), Josephsohn (Des. 69,277), Harris et al. (Des. 274,859), Bernat (EP 447733), Gardner (3,366,077), Oprean (1,913,851), DeVillars (GB 302303), Sisco (Des. 54,782), Swiss Colony Christmas Book (Pub. 1982), Burt (1,618,324), Burt (1,718,997), and Musher (2,217,700). This rejection is respectfully traversed.

Applicant has amended independent Claim 17 to recite that the interior layer is formed to represent a skeleton of a human hand, and that the exterior layer is shaped and colored so as to represent the skin and flesh of the human hand. Applicant has rewritten Claim 26 in independent form to recite that the first layer is formed to represent a skeleton of a human thumb, and that the second layer is shaped and colored so as to represent the human thumb. Applicant has amended independent Claim 36 to recite that the first layer is formed to represent a skeleton of a caricature, and that the second layer is shaped and colored so as to represent the caricature. Support for these amendments is found at page 12, lines 9-10.

The claims in this application have been revised to more particularly define Applicant's unique construction in view of the prior art of record. Applicant respectfully submits that for at least these reasons, independent Claims 17, 26, and 36 are allowable over the prior art applied of record. Reconsideration of the claims in light of the amendments and for the following reasons is respectfully requested.

Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

The primary applied reference to Tamasaki discloses a cake formed in and flavor to represent a portion of fried chicken when eaten. The Tamasaki reference fails to provide a carrier substrate, such a stick, as recited in each of Applicant's independent Claims 9, 14, and 19. Further, the Tamasaki provides a hard biscuit as an imitation bone, and a flavored cake material as the flesh in order to simulate fried chicken, wherein the imitation bone is an edible carrier. As such, the Tamasaki foodstuff may reduce the amount of residual waste; Tamasaki increases the risk of the ingestion of a bacterial or viral matter due to the handling of the edible carrier.

The secondary references likewise fail to provide the necessary teaching to overcome the deficit of the Tamasaki reference. For instance, each of the references to Mederer and Neuhauser discloses multi-layer foodstuff that has at least three layered segments, such that the top and bottom layers are the same, and the inner layer has a different shape and color, so as to represent a 'traditional hamburger', or some other sandwich type food. Neither Mederer nor Neuhauser describe a candy novelty having a carrier substrate, such as a stick. There is no guidance or motivation found in either of these

references that would have lead one of ordinary skill to obviously arrive at Applicant's uniquely claimed structure as now recited in independent Claims 17, 26, and 36.

With respect to the remaining myriad of alleged combinations, it is Applicant's opinion that there is not a single cited or applied reference that encompasses the basic structure, alone or in combination, of Applicant's candy confection novelty as claimed. Specifically, the remaining relied upon references to Manoski, Heppe, Mueller, Renner, Eales, Bernat, Gardner, Oprean, DeVillars, Sisco, Burt ('324), Burt ('997), Musher, and the Swiss Colony pub., like Mederer and Neuhauser, fail lead one having ordinary skill to obviously arrive at Applicant's claimed invention, as recited in the independent claims. Albeit, the Bernat reference does disclose a non-edible wand (i.e., stick) however, the Bernat clearly specifies that the wand is disposed in the lower semi-spherical outer layer of the lollipop. In addition, the outer layer of Bernat is formed of a substantially hard and transparent candy. The purpose of this formulation is that Bernat desires the nucleus to be visible before consumption of the outer layer of the lollipop. Whereas, Applicant's claimed candy provides a delightful and surprise effect for the consumer upon seeing the hidden internal hard candy having the anatomical form.

With respect to the Josephsohn and Harris et al. design patents, although the physical appearances of these applied references seem to disclose the form of a body or body part, there is no guidance or motivation that provides one having ordinary skill in the art, aside from Applicant's own disclosure to arrive at the structure and arrangement of the claimed embodiments of Applicant's invention.

Further, the application of such a great barrage of references would lead one skilled in the art into chaos and confusion rather than to the structure of the claimed embodiments.


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As such, Applicant respectfully requests the withdrawal of these unusual grounds of rejections that seemingly appear at a "grasping of straws" without teaching the specific limitations required of the claims. Applicant respectfully requests the withdrawal of this grounds of rejection. A Notice to that effect is earnestly solicited.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,


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